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September 15, 2004

BY HAND AND VIA E-MAIL

Alan J. Scrim
Chief, Policy and Rules Division
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

RECEIVED - FCC

SEP 15 2004

**Federal Communication Commission
Bureau / Office**

RE: Response to SafeView, Inc., Request for Waiver of Sections 15.31 and 15.35 of the Commission's Rules to Permit the Deployment of Security Screening Portal Devices that Operate in the 24.25-30 GHz Range (filed August 13, 2004 and amended August 18, 2004)

Dear Mr. Scrim,

The purpose of this letter is to respond, on behalf of XO Communications, Inc. ("XO"), to the Request for Waiver submitted by SafeView, Inc. ("SafeView"), which asks that the Federal Communications Commission ("FCC" or "Commission") waive certain of its rules to allow SafeView to operate an unlicensed security device.^{1/} XO holds multiple Local Multipoint Distribution Service ("LMDS") authorizations across the United States. Its LMDS licenses cover segments of the band 27.5 to 31.225 GHz, which is included in the spectrum for which SafeView seeks relief. XO has reviewed SafeView's Request and is sympathetic to SafeView's initiative to develop innovative solutions to address public safety concerns. XO, however, is concerned that SafeView has not provided sufficient evidence to demonstrate that SafeView will provide adequate protection to licensed operations. Moreover, SafeView has not provided information to demonstrate that SafeView's own operations will not be impaired by any interference that SafeView would be required to accept from licensed operations. Accordingly, the FCC should not grant SafeView the requested relief at this time.

^{1/} See *SafeView, Inc. Request for Waiver of Sections 15.31 and 15.35 of the Commission's Rules to Permit the Deployment of Security Screening Portal Devices that Operate in the 24.25-30 GHz Range, Request for Waiver* (filed August 12, 2004 and amended August 18, 2004) ("SafeView Request").

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SafeView proposes to produce a device used to screen passengers traveling through security portals at airports, government buildings, prisons, and border crossings. The device is designed to operate on an unlicensed basis utilizing spectrum in the 24.25 GHz to 30 GHz bands and will use radio frequencies to create three-dimensional images of screened individuals to assess whether the individual is carrying weapons or contraband.^{2/} SafeView maintains that it requires a waiver of sections 15.31(c) and 15.35(b) in order to certify the device. Because the device operates using a “sweeping technology,” SafeView is required, pursuant to section 15.31(c), to take measurements that determine whether the device complies with the FCC’s rules when the device is stopped.^{3/} SafeView argues that measurements taken while the sweep is stopped greatly overstates the interference potential, whereas measurements taken with the sweep running better reflects the absence of interference potential. In particular, SafeView reports that measurements taken with the sweep running do not exceed the maximum permissible peak emission level of 20 dB, which is the maximum average power level permitted pursuant to section 15.35(b) of the FCC’s rules, but that tests taken with the sweep stopped result in peak emissions that are 21 dB above the 20 dB limit, or 41 dB.^{4/} For these reasons, SafeView requests waiver of the FCC’s rules.

XO spent approximately \$997 million to obtain the spectrum that may be affected by SafeView’s request. XO recognizes that simply being an auction winner does not render it immune from unlicensed operations on the spectrum for which it is the licensee; the Commission’s rules permit unlicensed operations in a variety of licensed bands. However, the FCC’s regulations governing unlicensed operations are intended, among other things, to protect licensed users. The FCC must be convinced that those licensed users will not be adversely affected when an entity seeks a waiver of the rules designed to offer that protection, particularly when the licensed users expended significant resources to obtain the spectrum at auction.

SafeView has not offered evidence sufficient to convince the FCC that XO and others will continue to be protected from SafeView’s unlicensed operations. Accordingly, SafeView has not demonstrated with particularity that it is in the public interest to grant the waiver request. Although the SafeView Request maintains “that it will not cause interference to any victim receiver,” the justifications offered by SafeView do not provide the FCC with sufficiently detailed information to merit grant of a waiver. For example, SafeView states that it will not create harmful interference to “indoor users” because no indoor users will be affected by its operation. In addition, it asserts that indoor users such as fixed microwave services are “extremely unlikely to receive interference.” SafeView, however, does not describe why indoor users will not experience harmful interference, nor does it consider, discuss, or offer any evidence to show that it will not create harmful interference to licensed operations that are capable of operating indoors. SafeView also does not discuss how its operations would impact

^{2/} SafeView Request at 2.

^{3/} 47 C.F.R. § 15.31(c).

^{4/} SafeView Request at 9-11.

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receivers installed indoors for licensed operations. XO contemplates that it will operate LMDS facilities indoors and may be negatively affected by interference to indoor operations. Finally, SafeView does not provide any evidence to demonstrate that its operations will not impact outdoor users, but merely states "that high building attenuation will protect any outdoor victim receivers."^{5/}

The FCC should require SafeView to provide detailed information, including engineering studies, analyses, diagrams, or reports to further substantiate its claims that the device will not create harmful interference to licensed operations. Requiring SafeView to provide sufficient evidence to demonstrate that it will not create interference to licensed operations is consistent with the FCC's rules, regulations, and decisions. Part 15 provides that operation of an unlicensed device "is subject to the condition that no harmful interference is caused."^{6/} SafeView has not demonstrated that it meets this condition. Moreover, FCC case law makes it plain that the FCC will not grant requests for waiver when the petitioner does not provide sufficient information regarding the interference potential of the device.^{7/} Accordingly, the FCC should refrain from taking action until SafeView is able to provide specific information to demonstrate that it will not create harmful interference to licensed services operating in the 24.25 to 30 GHz band.

In addition, SafeView failed to show that its own operations will not be impaired by interference received from licensed operations. In particular, SafeView has not demonstrated that its equipment is capable of continuing to operate if it receives harmful operations from licensed operators. The FCC's rules provide that licensees must cease operation of a device upon notification by a Commission representative that the device is creating harmful interference to a licensed user.^{8/} Moreover, the FCC's rules require SafeView to accept all harmful interference from licensed operations. SafeView has not demonstrated how it will account for interference received from licensed operations or provided any description of the steps it will take if required to cease its operations. Based on the critical role that SafeView envisions for its devices, failure to account for these issues could severely impact public safety operations and may leave airports, government buildings, and prisons without means to secure the building or airport terminal.

For these reasons, grant of the waiver is inappropriate at this time. SafeView should provide sufficient evidence to demonstrate both that it will not create harmful interference to

^{5/} SafeView Request at 3.

^{6/} 47 C.F.R. § 15.5.

^{7/} *Petition for Waiver of Part 15 of the Commission's Rules To Operate a Two-Way Wireless Digital Radio System in the 407-806 and or 216-220 MHz bands, Memorandum, Opinion and Order*, 8 FCC Rcd 2730 ¶ 9 (1993) (denying petition for waiver because the petitioner did not provide sufficient information concerning the potential for interference to licensed services); *Sielox Systems Inc., Memorandum, Opinion and Order*, 2 FCC Rcd 2193 (1987) (conditioning waiver on strict adherence to emissions standards proven to not create harmful interference).

^{8/} 47 C.F.R. § 15.5.

Mr. Alan J. Scrimme

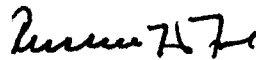
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licensed operations and that it has accounted for any received interference that can impact the device's operations. To meet the requirement, SafeView should submit detailed reports, engineering analyses, and other documentation to meet this showing. Requiring SafeView to provide this information will ensure that public safety interests are being served in a responsible way and will ensure that licensees will not experience any deleterious effects to their operations. Moreover, the FCC should refrain from taking any action on the request until SafeView provides the information required and until affected licensees have an opportunity to review SafeView's engineering studies. In the alternative, the FCC should dismiss SafeView's Request for failure to satisfy the waiver standard.

Should you have any questions regarding this matter, please contact the undersigned.

Respectfully submitted,



Russell H. Fox

cc: Mitchell Lazarus, Counsel for SafeView, Inc. (by first-class mail)
Joseph M. Sandri, Winstar Communications, LLC (by first-class mail)
Edward Thomas, FCC (by e-mail)
Bruce Romano, FCC (by e-mail)